

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Gurjot Kaur	Team: Team # 6	CCRB Case #: 200509501	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 08/16/2005	Location of Incident: 95-47 115th 2nd floor	Precinct: 102	18 Mo. SOL 2/16/2007	EO SOL 2/16/2007	
Date/Time CV Reported Tue, 08/16/2005 12:00 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/16/2005 3:51 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Nicholas Ruiz	16041	933304	102 PCT
2. POM Ted Saint-Gerard	26747	934145	102 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Nicholas Ruiz	Abuse: PO Nicholas Ruiz entered the second floor apartment of 95-47 115th Street.	
B.POM Ted Saint-Gerard	Abuse: PO Ted Saint-Gerard entered the second floor apartment of 95-47 115th Street.	

Synopsis

On August 16, 2005, a little before 12:00 AM, § 87(2)(b) sat in the bedroom of her second floor apartment at 95-47 115th Street in South Richmond Hill with her son, § 87(2)(b) when PO Nicholas Ruiz and PO Ted Saint-Gerard walked into the unlocked but closed room sans her consent and knowledge (Allegations A and B). PO Ruiz explained to § 87(2)(b) that the officers were there in response to a 911 call by their landlady, § 87(2)(b) who resides on the first floor of the same building. § 87(2)(b) had reported to 911 that the Bawas had left their water running. PO Ruiz advised § 87(2)(b) that due to heightened tensions between the landlady and her family, it “would not be a good idea to stay there.” § 87(2)(b) noted the officers’ badge numbers and names. She also stated there had been no water damage.

§ 87(2)(g)

Summary of Complaint

Civilian Statements (Encl. 7A-7B, 8A, 9A-9D, 10A-10D)

§ 87(2)(b) filed a complaint on behalf of his family by telephone on August 16, 2005 regarding an encounter that had occurred the evening before at approximately 12:00 AM (Encl. 7A-7B). § 87(2)(b) stated that he was not home but his wife, § 87(2)(b) and his children § 87(2)(b) and § 87(2)(b) were home at the time of the incident. § 87(2)(b) called § 87(2)(b) at work (he runs a store) and informed him that PO Ruiz and a PO “Saint” had entered their home without permission or a warrant regarding an issue with running water. The officers told the § 87(2)(b) family they needed to leave their home. § 87(2)(b) stated he pays his rent on time and does not have any issues with his landlady that call for an eviction. § 87(2)(b) stated he heard from his community about the CCRB and decided to file a complaint in regards to this matter.

Results of Investigation

Field Canvassing:

The undersigned investigator traveled to § 87(2)(b) on October 20, 2005 and took pictures of the second floor hallway of the § 87(2)(b) family home (Encl. 6A-6D). The second floor hallway did have four entrances with the bathroom separated from the rest of the apartment. The door closest to the stairwell, at the foot of the stairs, was the bedroom.

§ 87(2)(b) was interviewed at the CCRB on September 12, 2005 regarding an encounter she had with members of the NYPD on August 16, 2005 at her home location of § 87(2)(b). § 87(2)(b) is § 87(2)(b) old. Portions of her interview were conducted in Punjabi and translated by Investigator Kaur (Encl. 10A-10D)

On August 16, at approximately 12:00 AM, § 87(2)(b) sat in her bedroom with her § 87(2)(b)-old son, § 87(2)(b) when two uniformed officers entered her home. There is a main entrance on the first floor accessible to the family on the first floor, the § 87(2)(b) family on the second floor, and the landlady. There are three available entrances into § 87(2)(b)s home. § 87(2)(b)s apartment is on the second floor but there is no one main entrance. The kitchen, living room, and main bedroom all provide separate entrances into the residence. They are connected from the inside and one does not have to step into the hallway to get into any of the three rooms. However, the bathroom, across the hall from the bedroom, is separate from the apartment and can only be accessed from the second floor hallway. In other words, it appears as if there are

four apartments on the second floor. The room closest to the stairwell is the bedroom, the one that the officers opened.

PO1 and PO2 entered § 87(2)(b)'s home through the bedroom door where she sat near a coffee table with her son, § 87(2)(b). PO1 (identified by nameplate as PO Ruiz, short, chubby, Hispanic, light skin) and PO2 (taller than 6'1, thin, black and male; identified by nameplate as Gerard although § 87(2)(b) was unable to remember the exact wording of his name) entered her unlocked bedroom door. PO Ruiz entered her home first. § 87(2)(b)'s daughter, § 87(2)(b) came in from the adjacent living room when PO Ruiz and PO Saint-Gerard entered the bedroom. PO Ruiz told her he was there in response to a call from their landlady who had reported that there was a water leak in their bathroom. § 87(2)(b) stated that the bathroom is outside her home in the upstairs hallway and there is no lock so the landlady could have accessed it anytime.

PO Ruiz told § 87(2)(b) to leave her home because their landlady was "not good" and could cause their family more damage. PO Ruiz told her for their best interest, it would not be a good idea to stay there. § 87(2)(b) started to call her husband and PO Ruiz inquired why she was doing that. On the phone, her husband told § 87(2)(b) to get the officers' badge numbers. She asked PO Ruiz for his badge number and he showed it to her. She took down both of the officers' badge numbers. § 87(2)(b) then told PO Ruiz that she could not afford to leave her home. § 87(2)(b) told the officers they were discriminating against her. § 87(2)(b) told PO Ruiz to inform the landlady that their family refuses to vacate their place of residence. PO Ruiz told her he would not speak to the landlady but was simply making a suggestion that she vacate her place of residence. PO Saint-Gerard did not speak throughout the entire incident. PO Ruiz and PO Saint-Gerard did not search § 87(2)(b)'s home but stood in front of her coffee table throughout the entire encounter while they conversed with her.

§ 87(2)(b) offered a telephone statement to the CCRB on August 22, 2005 (Encl. 8A) and was interviewed at the CCRB on September 12, 2005 regarding an encounter she had with members of the NYPD on August 16, 2005 at her home location of § 87(2)(b) (Encl. 9A-9D). § 87(2)(g) § 87(2)(b) works for § 87(2)(b) and is § 87(2)(b) old.

On September 12, 2005 at 12:00 AM, § 87(2)(b) was sitting on a sofa in the living room when she heard the front door open. The front door led into a bedroom where her mother, § 87(2)(b) and her brother, § 87(2)(b) sat. There are three entrances that lead into § 87(2)(b)'s second floor apartment from the hallway. One is in the kitchen, one is in the living room and one is the bedroom. At the time of the incident, the living room door was locked and the bedroom door that the officers utilized was unlocked. § 87(2)(b) is unsure whether the kitchen door was locked.

As soon as she heard the door in the adjacent bedroom open, § 87(2)(b) went in there and saw two uniformed police officers entering her home. They had not knocked but had just walked in. § 87(2)(b) stated that no excessive force was used in opening the door. PO1 (identified as Ruiz by nameplate, male, Hispanic, fair, dark blue uniform, 5'10, chubby, black hair) and PO2 (black, male, tall, 6'1, identified through investigation as PO Saint-Gerard) explained to the § 87(2)(b) family that they had arrived in response to a 911 call their landlady made regarding water running in the bathroom.

§ 87(2)(b) stated that the police had been called to her home regarding problems with their landlady on multiple occasions. PO Ruiz and PO Saint-Gerard had not been to her home prior to this incident. On August 8, 2005, § 87(2)(b) had called the police because her landlady had pushed her. Two different male officers arrived in response to that incident. No written complaints were filed and the landlady and § 87(2)(b) were told to work the situation out among themselves.

On September 12, 2005, § 87(2)(b) stated that the officers did not investigate the leak problem at any point but informed the § 87(2)(b) family that they should vacate their place of residence. PO Ruiz and PO Saint-Gerard did not check the bathroom at any time. § 87(2)(b) informed PO Ruiz and PO Saint-Gerard that the landlady had been verbally abusive to their family and was searching for excuses to call the police. PO Ruiz told her that if they felt threatened, they should vacate their home.

PO Ruiz repeated several times that it was better for them to leave the apartment. § 87(2)(b) stated that he was not threatening but forceful. PO Saint-Gerard did not speak at all throughout the incident.

§ 87(2)(b) is unsure why the landlady has a problem with her family despite the fact that rent is paid every month. Her landlady has not told § 87(2)(b) that she wants her family to vacate their home. Recently, § 87(2)(b) stated her family received a written letter stating she wants the § 87(2) family to vacate her home.

§ 87(2)(b) feels that it was a civil matter and said it was not right for the police to have entered her home without permission. Nor should the “police take sides and tell us what to do.”

Attempts to Gather Additional Civilian Testimony:

It was difficult to corroborate schedules and obtain § 87(2)(b)'s testimony because he is in school and involved in many after school activities that extend into the late hours of the evening. § 87(2)(g)

§ 87(2)(g)

Officer Statements (Encl. 11A-11D, 12A-12E):

PO Nicholas Ruiz was interviewed by the CCRB on October 5, 2005. On August 16, 2005, PO Ruiz' tour ran from 2315 to 0750 hours. His assignment, along with his partner PO Ted Saint-Gerard, was to patrol the sectors in the confines of the 102 precinct. Because he was the operator, PO Ruiz did not have any relevant memo book entries pertaining to the incident (Encl. 11A-11D).

On August 16, 2005, PO Ruiz and PO Saint-Gerard responded to a landlady-tenant dispute at § 87(2)(b) in Richmond Hill at approximately 12:00 AM. The landlady opened the front door and invited the officers into her first floor apartment. The officers stood in the landlady's son's bedroom. She explained that the tenants above her were running the water in the bathroom on the second floor and there was water damage. PO Ruiz investigated the water damage but determined there was no recent damage evident. In fact, the damage he observed appeared yellowed and dry.

Because he had not heard water running at any point, PO Ruiz concluded further investigation was unnecessary and did not check the bathroom. PO Ruiz explained to the landlady that this was a civil matter and she would have to take it to housing court. The landlady stated that since her son had left for the Marine Corps, the tenants upstairs had been harassing her and she felt scared. She did not offer further details regarding this harassment.

PO Ruiz and PO Saint-Gerard decided to head upstairs and speak to the tenants. The officers climbed the stairs and PO Ruiz knocked on a wooden door adjacent to the stairwell. He did not recall if there were other doors or entrances into the second floor apartment. PO Ruiz did not hear any noise coming from the second floor apartment. PO Ruiz told the landlady to stay downstairs in her apartment and out of the stairwell because he did not want her presence to create any altercations.

An Indian woman, aged 40-45, opened the door immediately. PO Ruiz asked her if the officers could enter and she invited them in. The officers stood in what appeared to be a family room. There was a couch and a telephone. PO Ruiz stated there were no beds in the room. A daughter was in the room as well and a son joined later.

PO Ruiz explained to the older lady that the landlady had made an allegation that the § 87(2) family was harassing her and that they had been contacted regarding running water.

The older lady explained to the officers that there was no water damage and that the landlady always called the police. She also told PO Ruiz that the landlady had attacked her daughter before. PO Ruiz asked the daughter if there were any visible injuries. She replied, “no.” PO Ruiz asked her if she wanted to make a police report but she said no. PO Ruiz does not know why she did not want to file a criminal complaint.

PO Ruiz explained to the older lady that she could settle the matter in housing court because it was a civil matter. The older lady was upset that PO Ruiz was not taking her side in the matter. He explained to her that he could not take sides. PO Ruiz stated that at no point did the older lady or anyone suggest the officers were discriminating against her family. Other than to tell them to go court, PO Ruiz did not offer any other advice.

PO Saint-Gerard did not speak to the tenants at any point.

The older woman asked for the officers' shield numbers and the telephone number of the Precinct. PO Ruiz and PO Saint-Gerard provided her with that information.

After they left the apartment, PO Ruiz and PO Saint-Gerard went downstairs and spoke to the landlady. PO Ruiz explained to her that the officers had spoken to the tenants and reiterated that it was a landlord-tenant issue. The landlady did not request to file any criminal complaints regarding her being harassed by the tenants.

PO Ted Saint-Gerard was interviewed by the CCRB on October 14, 2005 (Encl. 12A-12E). On August 16, 2005, PO Saint-Gerard's tour ran from 2315 to 0750 hours. His assignment, along with his partner PO Nicholas Ruiz, was to patrol sector C and D in the confines of the 102 Precinct. PO Saint-Gerard brought relevant memo book entries to the interview. His memo book states that on August 16, 2005 at 2339 hours, PO Saint-Gerard responded to a 10-52F (dispute) at [REDACTED] § 87(2)(b) [REDACTED]. At 0001 hrs, PO Saint-Gerard reported it back as a 10-91 (non-crime).

On August 16, 2005, PO Saint-Gerard and PO Ruiz received a call at 11:39 PM regarding a landlady-tenant dispute at [REDACTED] § 87(2)(b) [REDACTED] in Richmond Hills, Queens in Sectors A and B. PO Saint-Gerard stated that they responded to the call and asked Communications to call the complainant to open her front door. When the officers arrived at the two-story home, they waited in their RMP until they were notified that the landlady would let them in. The landlady opened the front door and walked the officers around the house. She informed the officers that there was a tenant upstairs on the second floor that kept running the water. It had overflowed and seeped down through the ceiling to the landlady's apartment on the first floor. PO Saint-Gerard observed that there was visible water damage on the ceiling in the entire apartment but it had dried. Dry water marks were prominent on the ceilings of a couple of rooms but PO Saint-Gerard did not remember what room had the most damage. Later, PO Saint-Gerard assumed the water was running from the kitchen and the bathroom of the tenants' apartment. The landlady asked the officers to speak to the tenants to settle the differences. She told the officers she wanted to evict the tenants but did not specify as to what the problems were. PO Ruiz spoke to the landlady the entire time.

PO Saint-Gerard and PO Ruiz headed upstairs to the tenants' apartment after approximately ten minutes. The landlady followed but PO Ruiz told her to stay downstairs. The landlady complied with their request. PO Saint-Gerard stated that they went upstairs because of the problem with the running water although he did not hear any running water at any point. PO Saint-Gerard said the apartment door was at the foot of the stairs and believed there was only one apartment on the second floor. PO Saint-Gerard could not recall what this door looked like or how he knew there was only one apartment.

The officers knocked on the door and a 50 year-old woman opened the door. The officers identified themselves as police officers and she invited them in by saying, "come in." The officers stood in her living room near the apartment door. PO Saint-Gerard assumed it was a living room because he saw a television set. He cannot recall if there were any beds in the living room. PO Ruiz started talking to her but PO Saint-Gerard remained silent the entire time. PO Ruiz told the woman, "If there's running water, stop running the water." The woman informed the officers that she was not running the water. The woman's daughter and son also entered the living room.

PO Saint-Gerard stated that the officers walked around the apartment into the kitchen and the bathroom and observed there was no wet floor. Everything was dry. Later in the interview, PO Saint-Gerard stated he did not have a mental image of seeing a bathroom at any point but only assumed there was one because it was

an apartment. At another point, PO Saint-Gerard stated that he stayed in the living room while PO Ruiz walked around the apartment with the woman but that PO Ruiz remained in his view at all times. PO Saint-Gerard stated their conversation revolved around trying to establish if the floors were wet.

At some point in the interaction, PO Ruiz referred the tenants to landlady-tenant court. PO Ruiz told the tenants that the landlady wanted them to move out. PO Saint-Gerard vaguely recalls the tenants stating they could not afford to move and that they had to stay there. According to PO Saint-Gerard, PO Ruiz was not forcing the tenants to leave but simply making a suggestion.

The woman told the officers that the landlady had hit her daughter earlier that day. PO Ruiz told her she should have contacted the police right away. PO Ruiz offered to get the daughter EMS but there were no visible bruises. No criminal complaints were filed by either the tenants or the landlady regarding this incident.

PO Saint-Gerard stated that at some point in the encounter, the case was referred to housing court because it was a civil matter and not a criminal matter. For the most part, the woman (tenant) was polite to the officers but toward the end, she requested PO Saint-Gerard and PO Ruiz' names and they provided her with that information. The only change in her demeanor was that she requested information and PO Saint-Gerard felt she was hostile. According to PO Saint-Gerard, "she totally flipped. And she made one statement saying she calls Officer Ruiz and me all the time but we fail to respond. We always take the landlady's side." The woman stated PO Ruiz and PO Saint-Gerard's names although PO Saint-Gerard claimed he had only met her that day for the first time. He did not understand her reference and is surprised by her stating what she did.

Police Documents

Roll Call (Encl. 13A): August 16, 2005, Tour One of the 102nd Precinct.
PO Ruiz and PO Saint-Gerard were partners assigned to car number 2075.

There is one sprint associated with this incident (Encl. 15A). Sprint job § 87(2)(b) indicates that on August 15, 2005 at 11:20 AM, there was a call for a 10-52D1 (Landlord and Tenant Dispute) from § 87(2)(b). The caller was female, by the name of § 87(2)(b) and indicated she was waiting for the police because her basement was flooded. She stated the neighbors are doing it on purpose and there was water everywhere and now they turned the pipe off at the location. Sector C of the 102nd Precinct responded to the incident. At 12:03 AM, the incident was corrected to be a non-crime.

Notice of Claim

Robert NeSmith of the Corporation Counsel confirmed that the § 87(2)(b) family have not filed a Notice of Claim against the City of New York.

Officers' History of CCRB Cases Resulting in Discipline (Encl. 5A-5B):

PO Ruiz and PO Saint-Gerard do not have any substantiated complaints in their CCRB history.

Civilian CCRB History (Encl. 5C):

This is § 87(2)(b)'s first CCRB complaint.

Criminal Conviction History of Civilians:

As of July 25, 2005, the NYPD discontinued the CCRB's direct access to the BADS database. Although the NYPD is fulfilling the CCRB's request for BADS records, it has refused to provide the CCRB with the arrest histories of CCRB witnesses.

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) and § 87(2)(b) and § 87(2)(b) identified PO Ruiz by name. § 87(2)(b) knew a portion of PO Saint-Gerard's name and was able to offer a description of both officers, which matched their appearance. Roll call and PO Saint-Gerard's memo book entry verified officer involvement. In addition, officer testimony verified involvement in the incident.

Factual Assessment and Issues in Dispute

It has been established that PO Ruiz and PO Saint-Gerard went to § 87(2)(b) in regards to § 87(2)(b) 911 call about the upstairs tenants (the Bawas) leaving their water running. PO Ruiz conversed with § 87(2)(b) regarding landlady-tenant matters. PO Saint-Gerard did not verbally communicate with any of the civilians.

§ 87(2)(g)

Civilian Credibility Assessment

§ 87(2)(g)

Neither § 87(2)(b) nor § 87(2)(b) reported having seen PO Ruiz or PO Saint-Gerard at a prior date.

§ 87(2)(g)

As noted in *PD v. McEvoy*, "witness demeanor, consistency of a witness' testimony, supporting or corroborating evidence, witness motivation, bias or prejudice, and the degree to which a witness' testimony comports with common sense and human experience" are important in assessing credibility (Encl. 4G).

§ 87(2)(g)

PO Ruiz and PO Saint-Gerard confirmed civilian testimony that there was no running water. PO Ruiz confirmed civilian testimony that the officers did not investigate the matter further by entering a bathroom but PO Saint-Gerard was unable to indicate such. Regardless, PO Ruiz and PO Saint-Gerard entered the § 87(2)(b)'s home at midnight in regards to an unfounded complaint. The original 911 call which stated that the "basement was flooded and water was running" proved to be completely untrue. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) described the officers as "forceful but not threatening." § 87(2)(b) presented the officers as sympathetic in the sense that they described the landlady as "not good" and said that for their (§ 87(2)(b)) best interest, it would not be a good idea to stay there.

Officer Credibility Assessment

§ 87(2)(g)

Both stated that the water damage on the first floor in § 87(2)(b) apartment was dry thereby eliminating any potential emergency situation. Both testified they did not hear water running. § 87(2)(g) PO Ruiz stated that the officers decided of their own free will to head upstairs and speak to the tenants. PO Saint-Gerard informed the CCRB that § 87(2)(b) requested the officers speak to the tenants because of their civil problems. § 87(2)(g)

PO Ruiz stated that he did not recall if there were other doors or entrances in the second floor hallway. PO Saint-Gerard was vague in his testimony and said that he believed there was only one apartment on the

second floor, with the apartment door at the foot of the stairs. § 87(2)(g)

PO Ruiz claimed that he knocked on the door adjacent to the stairwell and an older Indian woman answered. PO Ruiz asked her if they (the officers) could enter and she invited them in. PO Saint-Gerard stated that when the officers knocked on the door at the foot of the stairs, the older woman initially made the invite to come in and specifically said, “Come in,” after the officers had identified themselves as police.

After the consent was allegedly given, PO Ruiz stated the officers stood in what appeared to be a family room because it had a couch and a telephone and no beds. PO Saint-Gerard believed it was a living room because there was a television set but could not remember if there were any beds. He made no mention of a sofa. However, in the § 87(2) family home, the door adjacent to the stairwell is actually the bedroom and does in fact contain a bed. The living room is further to the right, at the end of the hallway with sofas and a television set. Both officers were consistent in accounting civilian presence and noted that a son and a daughter were in the room with § 87(2)(b)

PO Ruiz made no mention of walking around the § 87(2) apartment and said that because he had not heard water running when he was downstairs, he had concluded there was no need to investigate the matter. However, PO Saint-Gerard initially stated in his CCRB interview that both officers walked around into the kitchen and bathroom and observed that there was no wet floor. Later in the interview, PO Saint-Gerard stated he did not have a mental image of seeing a bathroom but only “assumed there was one because it was an apartment.” PO Saint-Gerard altered his statement again and said that PO Ruiz walked around the apartment while he stayed in the living room. He also said PO Ruiz was visible to him at all times. § 87(2)

PO Saint-Gerard also claimed that § 87(2)(b) complained that § 87(2)(b) had hit her that day. PO Ruiz stated that § 87(2)(b) told them that as well but did not say it had occurred on that same day.

§ 87(2)(g) PO Saint-Gerard then claimed that § 87(2)(b) had been polite throughout the entire incident except toward the end. To quote, he said when they were leaving, “she totally flipped” and requested the officers’ shield numbers which they provided. PO Ruiz described § 87(2)(b) as upset because he “would not take her side” and told her to settle the matter in housing court. However, he did not describe her demeanor as hostile. PO Ruiz stated he did not offer § 87(2)(b) any advice except to reiterate that it was a civil matter and should be settled in housing court. PO Saint-Gerard claimed that PO Ruiz told the tenants that § 87(2)(b) wanted to evict them but § 87(2)(b) said they could not afford to move. PO Ruiz did not note this interaction in his statement.

Both officers were consistent in that PO Ruiz handled the verbal communication while PO Ruiz silently observed.

§ 87(2)(g)

Allegation A: Police Officer Nicholas Ruiz entered the second floor apartment of § 87(2)(b)

Allegation B: Police Officer Ted Saint-Gerard entered the second floor apartment of § 87(2)(b)

PO Ruiz and PO Saint-Gerard indicated that they were granted consent to enter § 87(2)(b)’s residence.

§ 87(2)(b) and § 87(2)(b) stated that no such consent was granted. § 87(2)(g)

PO Ruiz stated he asked § 87(2)(b) if they could enter the apartment and she invited them in. PO Saint-Gerard explained that the officers had introduced themselves as “police” and § 87(2)(b) had

invited them in by saying, “come in.” § 87(2)(b) did not inquire why the police were at her door-at midnight-before inviting them in.

§ 87(2)(g)

PO Saint-Gerard stated that § 87(2)(b) the landlady, asked the officers to speak to the tenants about their civil problems. § 87(2)(g)

PO Saint-Gerard also asserted that PO Ruiz informed § 87(2)(b) that § 87(2)(b) wanted to evict them whereas PO Ruiz made no mention of this interaction in his statement.

§ 87(2)(g)

Entry without consent or a warrant is unlawful. Patrol Guide Procedure 203-10 states that entering a residence without proper legal authority is prohibited conduct and a wrongful abuse of authority (Encl. 2A).

In *PD v. Muzek*, Police Commissioner Raymond Kelly found Detective John Muzek guilty of unlawfully entering an apartment (Encl. 2A-2N). In that case, Detective Muzek attempted to utilize the *Payton v. New York* consent exception in which a police officer can make a warrantless arrest in a person’s home if the police officer obtains voluntarily consent to enter the premises. Defendant Muzek entered the home unlawfully, without the consent of the patrons, and made an arrest. The arrest was thereby considered unlawful because of the nature of the entry.

In *PD v. Shulman*, Police Commissioner Raymond Kelly found Detective Lennard Shulman to have wrongly entered and searched the residence of a person (Encl. 3A-3M). Another *Payton v. New York* exception was noted in that officers can make a warrantless arrest in a person’s home when urgent events leave the officer with insufficient time to obtain a warrant. Another exception to the warrant requirement in *Payton v. New York* is hot pursuit. Detective Shulman was found to be unconvincing in his testimony

§ 87(2)(g)

In analyzing natures of consent, the U.S. Supreme Court has ruled that “the People have a heavy burden of proving voluntariness” (Encl. 2A). Valid consent can be oral, written, or implied by specific conduct such as gestures (Encl. 1C). § 87(2)(g)

§ 87(2)(g) According to *Katz v. United States*, a “person must have exhibited an actual expectation of privacy and society is prepared to recognize (the expectation) as reasonable, legitimate, or justifiable” in order to determine if protection is granted under the 4th

Amendment (Encl. 1A). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: